UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,243	08/01/2003	James Joseph Babka	AUS919990357US2	2450

7590 12/27/2006 Winstead Sechrest & Minick P.C. 1201 Main Street P.O. Box 50784 Dallas, TX 75250-0784	EXAMINER CHEN, ALAN S

ART UNIT	PAPER NUMBER
2182	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

		Application No.	Applicant(s)
		10/633,243	BABKA ET AL.
Office Action Summary		Examiner	Art Unit	
		Alan S. Chen	2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 November 2006</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>4-8 and 17-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>4-8 and 17-29</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>02 November 2006</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments and amendments filed 11/2/2006, with respect to the rejection(s)

of claim(s) under 35 U.S.C. §101 and §103 have been fully considered and are persuasive.

Therefore, the rejection of claims 4-8 and 17-29 has been withdrawn. However, upon further

consideration, a new ground(s) of rejection is made in view of Running Linux, 3rd Edition

(hereinafter Linux).

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3.   Claims 4-8 and 17-29 are rejected under 35 U.S.C. 102(a) as being unpatentable by

Linux.

4.   Per claims 4, 17, 22 and 25, Linux discloses a computer implemented method, computer

program product and system wherein there is a processor *(inherent)*, operating system *(linux)*,

computer storage medium *(inherent, where linux operating system is stored, e.g., on a hard*

drive), and configuration manager *(bootloader for the kernel, see Section 5.3.1 and init program)*

comprising the step/logic/circuit to determine if configuration of a device has begun *(booting the*

kernel, Section 5.3.1 and Initialization after the kernel using the program init causes processes

and programs for configuration of devices to be executed; if a particular device is not

configured, e.g., it is not on the list of devices to be configured, having no command to execute it,

then the device is not configured; this latter case where it is determined that a device is not to be

configured is explicitly stated in Linux, Section, 5.3.2 where given a particular runlevel, e.g.,

runlevel "1", network devices are not configured and configuration has not begun for them. The

network devices are indeed existent and present in the computer system, just that it is determined

based on the runlevel being "1" to not begin configuration for the network devices). Note,

Examiner interprets the claims based on the overly broad use of conditional language such that

as long as the prior art reference shows that in determining whether a configuration of a device

has begun, and resulting in the determination that the device configuration has ***not*** begun, ***none***

of the claimed limitations regarding what happens if the device configuration has begun applies.

It should be further noted that the limitation of "determining if a configuration of a device has

completed" follows the same reasoning as determining whether a device has begun. If the device

has not begun configuration and will not be configured *(network devices when the runlevel is*

"1"), then it is determined that the device will not complete configuration.

5.   Per claims 5-8, 18-21, 23, 24 and 26-29, Linux discloses claims 4, 17, 22 and 25, wherein

if a network device is not configured or completed, then returning to the other steps are not a

necessary condition. Note, for claims 6, 19, 27, the Linux further shows in the console display of

device listings in section 5.3.1 that regardless of whether configuration of a device has completed

or not, the boot/init procedure will continually determine the next device to configure and

therefore return to step a). Note there is ***absolutely no antecedent basis*** associated with the

claimed "a device", and therefore it is interpreted as either the same device or a totally different

device is being determined to be beginning configuration or completed.

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure. Patents and patent related publications are cited in the Notice of References Cited

(Form PTO-892) attached to this action to further show details respect to the Linux OS and the

console display related to the bootloader and initiation processes within the Linux OS.
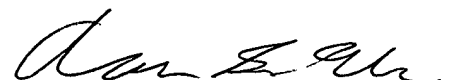
Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Alan S. Chen whose telephone number is 571-272-4143. The

examiner can normally be reached on M-F 8:30am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kim N. Huynh can be reached on (571) 272-4147. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASC
12/21/2006